of the actual intention of both parties to make a different contract. Nor do the circumstances of the case seem sufficiently unequivocal to warrant a judicial inference of such intention.

INTERFERENCE BY COMBINATIONS OF LABOR WITH EMPLOYER'S BUSINESS.—In view of the liberal attitude manifested in certain decisions of the New York Courts with respect to interference by combination with the conventional rights of the individual to pursue his own business unmolested,[1] it is pertinent to ascertain to what extent a combination of labor may interfere with the rights of an employer to deal with whom he chooses and to employ whomsoever he will. It would seem that properly such elementary rights should be legally affected by competition only or by rights of a similarly elementary character.[2] Of this nature is the right of the individual to arbitrarily refrain from working. Logically the same right appertains to the combination of individuals[3] and constitutes its most powerful weapon, the strike, which has found justification, together with peaceful picketing and even boycotting, where there has been direct conflict with the employer.[4] Regarding the right to work as property of the employee and so a commodity, and the employers as occupying the position of consumers, labor organization would seem to be justified on competitive principles, provided always that there is no restraint exerted by reason of the comprehensive nature of the combination.[5] Where the tendency towards such restraint exists, there would seem to present itself a point properly limiting the extent to which combination may go in the pursuit of its own interests,[6] for the courts are jealous of the rights of the public which are here involved, regarding suspiciously all concerted action having even the contingent effect of raising prices.[7] This has been the position with respect to association in restraint of trade.[8] Moreover, by analogy to the judicial condemnation of comprehensive association by employers with the purpose of refusing employment to members of a particular union,[9] it would seem that a similar condemnation should attach to prohibitive combination

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[1]Park & Sons Co. *v.* Nat. Druggist's Ass'n. (1903) 175 N. Y. 1; Nat. Prot. Ass'n *v.* Cumming (1902) 170 N. Y. 315; Jacobs *v.* Cohen (N. Y. 1904) 99 App. Div. 481; Rosenau *v.* Empire Circuit Co. (N. Y. 1909) 131 App. Div. 429.

[2]Curran *v.* Galen (1897) 152 N. Y. 33. See 6 Pomeroy, Equity Jurisprudence § 585.

[3]Mills *v.* U. S. Printing Co. (N. Y. 1904) 99 App. Div. 605; Nat. Prot. Ass'n *v.* Cumming (N Y 1900) 53 App. Div. 227; *cf.* Jersey City Printing Co. *v.* Cassidy (1902) 63 N. J. Eq. 759.

[4]Mills *v.* U S. Printing Co. *supra; cf.* Hertzog *v.* Fitzgerald (N. Y. 1902) 74 App. Div. 110; Butterick Pub. Co. *v.* Typographical Union (N. Y. 1906) 50 Misc. 1; Pickett *v.* Walsh (1906) 192 Mass. 572.

[5]See Davis *v.* United Engineers (N. Y. 1898) 28 App. Div. 396; Wunch *v.* Shankland (N. Y. 1901) 59 App. Div. 482; Erdman *v.* Mitchell (1903) 207 Pa. St. 79

[6]See Jacobs *v.* Cohen *supra.*

[7]See Park & Sons Co. *v.* Nat. Druggist's Ass'n. *supra.*

[8]People *v.* Milk Exchange (1895) 145 N. Y. 267.

[9]McCord *v.* Thompson-Starrett Co. (N. Y. 1908) 129 App. Div. 130.

of labor,[10] in order that the individual be protected from oppression. The courts, however, have been slow to set a limit upon the acts of unions in connection with disputes affecting the employer alone,[11] possibly, because of the arbitrary nature of the above mentioned right of the individual to refrain from work. It is arguable, however, that the personal quality of this right is lost by combination, in that a surrender of the individual volition is entailed, which is of importance because of the disfavor shown by the courts toward involuntary concurrence in the demands of organized labor, exemplified by the secondary strike and boycott.[12] A strike under such circumstances clearly does not involve the free exercise of the natural right of the individual. Its arbitrary quality has disappeared. It is precisely this consideration which makes motive important in the determination of conflicts involving combination of labor. The general purpose of such combination was recognized as a salutary one, and consequently courts[13] and legislature[14] agreed that it was not *per se* objectionable. So long as its action concerned employer and employee narrowly, there was a mere exercise of the natural right of the individual, and consequently, motive, being unimportant, was not inquired into. General purpose must, however, be kept distinct from, and cannot be used as an excuse for, the immediate motive.[15] Therefore, where third persons are concerned in the struggle between employer and employee, whether acting, so as to destroy the individual volition of the employees, or acted upon, so as to destroy the individual freedom of action of the employer, it would seem to be the better view, assuming the means employed to be lawful, to make motive determinative of the legality of the particular action.[16] Of course, violent or coercive action is condemned as unlawful means, irrespective of motive.[17] Upon a particularization of these principles should rest the employer's right to be free from molestation in the pursuit of his business, and to have freedom of action on the part of third persons in their dealings with him.[18] In the recent case of *Schlang* v. *Ladies' Waist Makers' Union* (1910) 124 N. Y. Supp. 289, the employees struck as the result of a dispute with the employer as to the employment of non-union labor, and the union threatened to call out its members in the

[10]Curran *v.* Galen *supra; cf.* Davenport *v.* Walker (N. Y. 1901) 57 App. Div. 221 *semble;* but see Nat. Prot. Ass'n *v.* Cumming *supra.*

[11]Mills *v.* U. S. Printing Co. *supra;* Collins *v.* American News Co. (N. Y. 1901) 34 Misc. 260; but *cf.* Barnes *v.* Typographical Union (1908) 232 Ill. 424.

[12]Beattie *v.* Callanan (N. Y. 1903) 82 App. Div. 7; Matthews *v.* Shankland (N. Y. 1898) 25 Misc. 604; see People *v.* Smith (1887) 5 N. Y. Cr. Rep. 509; Booth *v.* Burgess (1906) 72 N. J. Eq. 181.

[13]See cases cited in Note 4.

[14]See Penal Law § 582.

[15]People *v.* Smith *supra;* People *v.* Walsh (1888) 15 N. Y. St. Rep. 17. See Penal Law §§ 580, 582.

[16]Curran *v.* Galen *supra;* Davis *v.* United Engineers *supra;* Kellogg *v.* Sowerby (N. Y. 1904), 93 App. Div. 124; but *cf.* Butterick Pub. Co. *v.* Typographical Union *supra;* Foster *v.* Retail Clerks' Prot. Ass'n. (N. Y. 1902) 39 Misc. 48. See also 8 COLUMBIA LAW REVIEW 496.

[17]Hertzog *v* Fitzgerald *supra;* Davis *v.* Zimmerman (N. Y. 1895) 91 Hun. 489; Lubricating Oil Co. *v.* Standard Oil Co. (N. Y. 1886) 42 Hun. 153; Butterick Pub. Co. *v.* Typographical Union *supra.*

[18]See Jersey City Printing Co *v.* Cassidy *supra.*

employ of other manufacturers who had already settled similar disputes with the union, if they continued to supply the delinquent employer with goods of their manufacture. The court granted an injunction restraining such action on the part of the union because it was intrinsically unlawful to interfere with employers who had already settled their disputes, and because the attitude of the union was oppressive. Assuming that here the immediate object of the union was to injure the plaintiff rather than to advance a common cause, it is of course distinguishable from that of the *National Protective Association* v. *Cumming*. Considering the immediate object a legitimate one, the cases, although apparently opposed in spirit, may be aligned by interpreting the latter to justify prohibitive action by a comprehensive union with respect to non-union workmen, towards any one employing their members, in the sense that in each individual instance, the conflict between union and employer would be direct and isolated, whereas in the former it was general, affecting innocent as well as delinquent employers. Although it might be argued that the union, representing its members by agreement,[19] had a right to strike for the advancement of the interest of its members and could properly threaten to do what it had a right to do,[20] thus justifying the pressure put upon the employers not involved in the dispute, the court seems to have made a wise step in so restricting the right of self advancement as to safeguard the freedom of pursuing a trade without intimidation from virtual strangers,[21] and to recognize the plaintiff's interest therein. Surely, the fact that the employees were all affiliated to one organization could give no interest in the management of the employer's affairs to those not immediately employed in his business.[22]

THE PROTECTION OF REMEDIES UNDER THE CONTRACT CLAUSE OF THE CONSTITUTION.—To the inability of the courts to agree upon the conception of the obligation protected by the contract clause of the constitution has no doubt been attributable in large measure the diversity of holdings with respect to the extent to which that protection applies to remedies. Thus, from the view that the obligation is but the means of enforcing the contract[1] it readily follows that the remedy existing at the time of its inception is a part of the agreement—a contention that has frequently been made.[2] It is true there are abundant *dicta* to justify such a view, but the decisions have proceeded rather on the theory that the obligation, in the constitutional sense, consists in the necessity which exists by reason of the attitude of the State, of performing the stipulations of the contract or making reparation for failure so to do.[3] Undoubtedly, since this necessity is to be

[19]See Russell *v.* N. Y. Produce Exchange (N. Y. 1899) 27 Misc. 381.

[20]Nat. Prot. Ass'n. *v.* Cumming *supra;* Park & Sons Co. *v.* Nat. Druggist's Ass'n. *supra.* And see Plant *v.* Woods (1900) 176 Mass. 482 (dissent).

[21]*Cf.* Loewe *v.* Cal. St. Fed. of Labor (1905) 139 Fed. 71; Webb *v.* Drake (1899) 52 La. Ann. 290.

[22]*Cf.* Beattie *v.* Callanan *supra;* Oxley Stave Co. *v.* Cooper's Int. Union (1896) 72 Fed. 695; Purvis *v.* United Brotherhood (1905) 214 Pa. St. 348.

[1]Louisiana *v.* New Orleans (1880) 102 U. S. 203.

[2]Von Hoffman *v.* City of Quincy (1866) 4 Wall. 535.

[3]Sturges *v.* Crowinshield (1819) 4 Wheat. 122; Bruce *v.* Schuyler (1847) 9 Ill. 221.